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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,985	09/05/2003	Guoming G. Zhu	46107-0091	8945

7590 11/08/2006
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EXAMINER

NGHIEM, MICHAEL P

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 11/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/655,985	ZHU ET AL.	
	Examiner	Art Unit	
	Michael P. Nghiem	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-9, 11-14, 16, 17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13, 14, 16, 17, 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 2-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Amendment filed on September 6, 2006 has been acknowledged.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-9, 11, and 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims do not produce any tangible results. The practical application of the claimed invention cannot be realized until the information determined is conveyed to the user.

For the result to be tangible, it would need to be outputted to a user or displayed to a user or stored for later use. The result of detecting an open secondary winding (claims 3, 11) are not outputted or displayed to a user or stored for later use. Hence, the claims are treated as non-statutory functional descriptive material (see MPEP 2106).

Allowable Subject Matter

Claims 13, 14, 16, 17, 19, and 20 are allowed.

Reasons For Allowance

The combination or method as claimed wherein an arrangement of a controller and a timer between two comparators (claim 13) or a powertrain control module having an input operably connected to said output of said comparator and an output operably connected to said enable input of said integrator (claim 17) is not disclosed, suggested, or made obvious by the prior art of record.

Response to Arguments

Applicant's arguments filed on September 6, 2006 have been fully considered but they are not persuasive.

With respect to the 35 USC 101 rejection, Applicant argues that the claimed process is clearly statutory if it involves manipulation of data representing physical objects or activities. The claimed process involves manipulation of data that represents the physical activity of the combustion in a combustion chamber. Applicant further argues that the limitation in claims 3 and 11 reading "setting an open secondary flag" comprise storing the result of the process.

Examiner's position is that according to the Interim Guidelines, "... the tangible requirement does require that the claim must recite more than a Sec. 101 judicial exception, in that the process claim must set forth a practical application of that Sec. 101 judicial exception **to produce a real-world result**. Benson, 409 U.S. at 71-72, 175

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USPQ at 676-77 (invention ineligible because had "no substantial practical application.".)" (see page 11, Interim Guidelines). In order for the real-world result to be realized, the end result would need to be conveyed to the user. In other words, the result of detecting an open secondary winding would need to be outputted **to a user** or displayed **to a user** or stored for later use **by a user**.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Michael P Nghiem whose telephone number is (571) 272-2277. The examiner can normally be reached on M-H.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL NGHIEM
PRIMARY EXAMINER

Michael Nghiem

November 6, 2006